



Comptroller General
of the United States
Washington, D.C. 20548

159174
REDACTED VERSION*

Decision

Matter of: Management Systems Applications, Inc.

File: B-259628; B-259628.2

Date: April 13, 1995

Terence Murphy, Esq., Patrick H. O'Donnell, Esq., and L. Allan Parrott, Jr., Esq., Kaufman & Canoles, for the protester.

Paul F. Khoury, Esq., James J. Gildea, Esq., and Phillip H. Harrington, Esq., Wiley, Rein & Fielding, for NRC Technical Services Corporation, an interested party.

Marie T. Ransley, Esq., Elise Harris, Esq., and Mary Ann Bryant, Department of Health and Human Services, for the agency.

Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's contention that agency's cost realism analysis contained errors which resulted in an overstatement of its evaluated costs and an understatement of the awardee's evaluated costs is denied where a review of these alleged errors, as well as the record, shows that the agency's cost realism analysis was reasonably based.

2. Award to offeror submitting a lower-rated, lower-cost proposal is unobjectionable where the evaluation scheme announced in the solicitation gave equal weight to both technical and cost considerations, and where the contracting officer's cost/technical tradeoff analysis justifying the selection decision, in which each of the protester's technical advantages and the awardee's technical disadvantages was described and discounted, was reasonable.

3. Protester's allegation that organizational conflict of interest concerns were the real reason for its rejection, and that the contracting officer justified the award by

*The decision issued on April 13, 1995, contained confidential or source selection sensitive information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[DELETED]."

conducting unreasonable cost realism and cost/technical tradeoff analyses, is denied where the record shows it to be unfounded.

DECISION

Management Systems Applications, Inc. (MSA) protests the award of a contract to NRC Technical Services Corporation under request for proposals (RFP) No. 94-12(N), issued by the Department of Health and Human Services, Centers for Disease Control (CDC), for microprocessor support services. MSA primarily challenges as unreasonable both CDC's cost realism analysis and its cost/technical tradeoff analysis. MSA also alleges that the award decision was improperly based on organizational conflict of interest (OCI) concerns.

We deny the protest.

BACKGROUND

This solicitation, issued on March 28, 1994, anticipated the award of a cost-plus-fixed-fee contract for microprocessor technology support services over a base period, with up to four option periods. These services include hardware repair and maintenance, software support and operations, and network administration and videoconferencing support. The requirements were divided into two line items for each contract period. The first line item called for estimated costs to perform centrally managed and funded CDC-wide requirements, to be performed by contractor employees responding to trouble calls received by a help desk and hotline.² The second line item called for estimated costs for providing a level of effort of support to various CDC centers, institutes, or program offices as required by task orders. With minor exceptions, the work described in the solicitation is currently performed by MSA as the incumbent under three separate contracts.

Offerors were advised that technical proposals and costs would be of approximately equal importance. The RFP listed five technical evaluation factors, and a maximum attainable technical score of 1,200 points. Technical proposals would also be adjectivally rated as superior, acceptable, or unacceptable. The RFP stated that cost data would be evaluated to assess the realism of the proposed costs. The offeror presenting the most advantageous alternative to the government would be selected for award.

²These requirements are to be performed primarily in the Atlanta area, but exist as well in four cities nationwide.

CDC received four proposals by the May 25 closing date. The technical evaluation panel (TEP) established a competitive range of three, including MSA and NRC, and reviewed the cost proposals. CDC's Cost Advisory Activity (CAA) asked the Defense Contract Audit Agency (DCAA) to audit the offerors. Discussions were conducted, and initial best and final offers (BAFO) were submitted. Both offerors were rated technically acceptable, with MSA scoring 1,043 to NRC's 862. The cost realism analysis revealed that both offerors had understated their costs.

The agency concluded that an award could not be made on the basis of initial BAFOs. In addition to the fact that both offerors "greatly understated" their costs, MSA's proposal was inadequate with respect to security issues and it lacked certification documentation or required experience for a number of its proposed personnel. NRC's proposal shared this latter inadequacy, and was weak with respect to meeting response times. A second competitive range containing only MSA and NRC was established, additional discussions were conducted, and second BAFOs were submitted on October 27 and evaluated as follows:

	<u>MSA</u>	<u>NRC</u>
Technical:	1,066/Superior	855/Acceptable
Proposed Costs:	\$38,787,870	\$35,847,134

The TEP did not conduct a cost realism analysis of the second BAFOs. Instead, the TEP asserted that both offerors' proposed costs remained understated, and that the

³Since the third offeror's proposal was eliminated from the competitive range after the evaluation of initial BAFOs, we need not discuss it further.

⁴An agency may reopen negotiations after BAFOs where it is clearly in the best interests of the government to do so. NDI Eng'g Co., Inc., 66 Comp. Gen. 198 (1987), 87-1 CPD ¶ 37; Crown Point Coachworks and R&D Composite Structures et al., B-208694; B-208694.2, Sept. 29, 1983, 83-2 CPD ¶ 386. Although MSA contends it should have received the award based on its initial BAFO, as discussed above, significant weaknesses for both MSA and NRC remained in these initial BAFOs. We think that CDC's determination to request an additional round of BAFOs and to allow offerors the opportunity to revise their proposals or submit additional information falls within the permissible grounds of discretion afforded contracting officers in this area. Consequently, we find no basis to object to the agency's determination to request a second round of BAFOs. NDI Eng'g Co., Inc., supra.

independent government estimate (IGE) "suggested" that the costs would be equivalent for either offeror.

In recommending that an award be made to MSA, the TEP specifically cited three strengths it considered to be critical to meeting the RFP's response times: MSA proposed an appropriate number of staff for CDC-wide support in Atlanta; had warranty service provider status for all major manufacturers of CDC microcomputer equipment; and had in-place agreements with manufacturers to facilitate spare part acquisition. In contrast, NRC underestimated the staff for CDC-wide support in Atlanta; planned to resolve fewer service requests by telephone than the RFP suggested; had warranty service provider status for manufacturers of only a small portion of CDC's equipment; and had a policy of repairing equipment on-site that was inconsistent with its proposed equipment stocking levels.

Upon receipt of the TEP's recommendation, the contract specialist first complied with the RFP's requirement to conduct a cost realism analysis and evaluated MSA's costs at \$39,688,295,⁵ and NRC's costs at \$37,138,807, a difference of more than \$2.5 million. Next, she noted several factors indicating that NRC offered other cost advantages not reflected in the cost difference: significantly lower indirect costs; indirect rate ceilings;⁶ and performance of a major part of the contract through a labor-hour subcontract, which offered cost and labor efficiencies.

The contract specialist then reviewed each of the technical factors relied upon by the TEP in its recommendation and concluded that MSA's technical advantages were not sufficient to offset its higher cost. In so concluding, she detailed each reason for discounting MSA's noted advantages and NRC's noted disadvantages, and found that they were overemphasized. Considering the costs and technical merits presented by each proposal, she determined that NRC's proposal represented the most advantageous offer to the

⁵While the contracting specialist actually considered that MSA's evaluated costs were \$39,778,295, she now states that this was a miscalculation, and that use of the proper figure, \$39,688,295, would not have made any difference in her decision. MSA does not challenge this assertion.

⁶As a general rule, the maxim that the government bears the risk of cost overruns in the administration of a cost-reimbursement contract is reversed when a contractor agrees to a cap or ceiling on its reimbursement for a particular category or type of work. Advanced Technology Sys., Inc., 64 Comp. Gen. 344 (1985), 85-1 CPD ¶ 315; Vitro Corp., B-247734.3, Sept. 24, 1992, 92-2 CPD ¶ 202.

government. She also explained that MSA's requested waiver of the RFP's OCI clause, discussed below, was not in the best interest of the agency. The contracting officer approved the recommendation of award to NRC, and award was made on November 30. After its debriefing, MSA filed its initial protest in this Office, followed by a supplemental protest.

COST REALISM ANALYSIS

MSA argues that the cost realism analysis was "arbitrary, unreasonable, and fundamentally flawed." MSA alleges that it contains five errors which resulted in a substantial overstatement of MSA's costs and a substantial understatement of NRC's costs.

When agencies evaluate proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated costs are not dispositive, because regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation (FAR) § 15.605(d). Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. CACI, Inc.--Fed., 64 Comp. Gen. 71 (1984), 84-2 CPD ¶ 542. Because the contracting agency is in the best position to make this cost realism determination, our review of an agency's exercise of judgment in this area is limited to determining whether the agency's cost evaluation was reasonably based and not arbitrary. General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183, aff'd, American Management Sys., Inc.; Department of the Army--Recon., 70 Comp. Gen. 510 (1991), 91-1 CPD ¶ 492; Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

CDC-Wide Staffing

MSA argues that its proposed staffing level for the CDC-wide contract line items was improperly "straightlined" based on the hours it proposed for the base period.

MSA's proposed staffing for the base period declined by two employees for each of three option periods because, its proposal stated, historical data indicated a downward trend in support requirements. During the first round of discussions, the TEP asked MSA to explain its declining level of support, and MSA's response merely repeated its earlier-expressed rationale. The TEP concluded that the RFP's historical data did not indicate a downward trend in requirements, and that MSA's assumption was incorrect. In fact, the TEP stated that decreasing CDC budgets might mandate additional requirements for staff, and adjusted

MSA's costs accordingly. In her cost realism analysis, the contract specialist rejected both MSA's and the TEP's forecasts, and "straightlined" MSA's level of effort based upon the staffing it proposed in the base year.

MSA does not dispute that the RFP did not support its assumption, or that the RFP called for a constant level of effort for each contract period. In conducting a cost realism analysis, an agency must assure itself that each firm has proposed a technical approach that meets all of the RFP requirements, and that each firm has fairly and reasonably reflected the costs represented by its own approach in its cost estimate. Allied-Signal Aerospace Co., Bendix Communications Div., B-249214.4, Jan. 29, 1993, 93-1 CPD ¶ 109. Since MSA's technical approach contemplated performing the RFP's requirements with the staffing level proposed in the base period, and the decline in support was not explained by MSA's technical approach, we think the "straightline" adjustment was reasonable.

MSA also asserts that NRC's proposal should have been adjusted upward because the TEP thought it was understaffed. The TEP was concerned that NRC did not propose enough hardware technicians for Atlanta--four instead of the IGE's seven. However, as explained in the cost/technical tradeoff analysis, whereas the IGE assumed dedicated staff, NRC proposed to crosstrain its support staff, effectively increasing the number of staff available for hardware calls, and proposed to draw from a pool of technicians employed by its subcontractor, Digital Equipment Corporation (DEC), as well. Considering NRC's technical approach, the contract specialist discounted the TEP's concern and made no cost adjustments in this regard. MSA has not persuaded us that her action was unreasonable.

Labor Escalation Rate

MSA argues that the decision not to "equalize" the labor escalation rates applied to both offerors was unfair.

MSA proposed rates of [DELETED] percent for "exempt" positions and [DELETED] percent for other labor category averages, with no escalation for Service Contract Act rates. NRC proposed a [DELETED] percent rate overall. The CAA believed that both firms' rates were understated, as they were less than current DRI projections,⁷ and adjusted both firms' costs in accordance with DRI rates. The CAA did not take issue with DEC's proposed [DELETED] percent rate.

⁷DRI is an independent firm under contract to DCAA to provide data on escalation rate trends on a quarterly basis.

During discussions, MSA proposed a flat [DELETED] percent rate based on its "company wide historical data." Also during discussions, NRC asserted that its rate was consistent with recent industry practice, and in accordance with the experience of its parent corporation; it had experienced a [DELETED] percent per year increase in average annual salaries for the past 2 years, and maintained [DELETED] percent of its technical staff. In her cost realism analysis, the contract specialist applied MSA's proposed [DELETED] percent rate to its proposal, and the proposed [DELETED] percent rate of DEC, NRC's major subcontractor, to NRC's proposal.

An agency should adjust cost proposals in its cost realism analysis to reflect the agency's reasonable projection of anticipated escalation in labor rates over the term of the contract. General Research Corp., supra; Sabre Sys., Inc., B-255311, Feb. 22, 1994, 94-1 CPD ¶ 129. Here, both proposals included labor escalation rates based upon their own historical information; there is no basis in the record to question those rates. Accordingly, MSA's argument that the agency should not have applied its expressly proposed rate, and instead should have applied the same rate--the lower rate proposed by NRC--to both proposals is not persuasive. Further, given that NRC's proposed and supported rate was [DELETED] percent, and that its major subcontractor's proposed and approved rate was [DELETED] percent, we conclude that the agency's application of the latter, higher rate to NRC's proposal was reasonable.

Outside Resources

MSA argues that the agency failed to adjust NRC's proposal upward to account for its proposed use of outside resources to respond to service calls.

As noted above, the TEP was concerned that NRC anticipated providing more telephonic support to callers than the RFP's historical information suggested would be required. During discussions, NRC was asked to confirm the percentage of support it anticipated would require on-site calls, versus telephonic support, and responded by listing anticipated response types by percentage. Among other things, NRC's response stated that it anticipated that, for 5 percent of the calls, an outside resource would be called in for an on-site visit. MSA has seized upon this last line to assert that NRC plans to "farm out" 5 percent of its contractual obligations without providing any costs for doing so.

As an initial matter, we do not believe that NRC's response, standing alone, can logically be taken to mean that it is somehow modifying its proposal to "farm out" tasks to third parties. Its proposal states that the NRC/DEC team will

provide "all necessary facilities, management, supervision, labor, training, equipment, materials, supplies, third party licensing agreements, and other requirements" to perform the specified services. As the agency contends, and as supported by NRC's proposal, the firm reasonably assumed that some calls would require response by an outside resource. The agency cites two categories of such calls, for certain warranty repairs and for certain equipment, and asserts that they would not involve additional costs. The protester takes issue with the agency's position that NRC committed to furnish all required services and that these services do not require a cost adjustment to NRC's proposal.

With respect to the first category, the RFP allowed offerors to coordinate warranty repairs by either performing them as a warranty service provider, or by coordinating such service with a warranty service provider. At the time of its proposal, NRC was a warranty service provider for two manufacturers representing a small portion of CDC's inventory, and proposed personnel qualified to provide warranty service for most other manufacturers in CDC's inventory. NRC also committed to obtaining warranty service provider agreements to provide certified warranty repair of all CDC equipment. In this regard, NRC asserts that, during the pendency of this protest, it has obtained a warranty service provider agreement with the manufacturer representing more than half of CDC's inventory.

Moreover, to the extent that NRC will not be able to provide on-site warranty service while it is negotiating these agreements, contrary to MSA's assertion, its proposal specifically agreed to perform the various tasks involved in coordinating such services. Since the RFP did not require offerors to break down the costs for each type of provided service, there was no reason for the agency to question

⁸MSA's use of figures provided in the RFP to argue that these two categories of calls are not sufficient to include all of the calls in NRC's estimated 5 percent is not persuasive. Aside from the fact that the figures are vastly understated, MSA has made no showing that NRC actually proposed to provide for third parties to perform tasks under this contract.

⁹In addition to its statement that it would work with certified warranty providers for such services where it was not authorized to provide the services itself, NRC also stated that, during surges of similar problems, it might use the services of a hardware manufacturer or certified third party to support warranty repair.

whether the costs of coordination were included.¹⁰ A. agency is not required to verify each item in conducting a cost realism analysis. See Motorola, Inc., B-247937.2, Sept. 9, 1992, 92-2 CPD ¶ 334.

The other category of "outside resource" calls cited by the agency involves those to maintain or repair a class of equipment for which individual CDC offices, not the contractor, are responsible. The RFP provided that this equipment would not be supported centrally, under this contract, but by the equipment manufacturer or other source. However, the RFP also required the contractor to refer calls for support of such equipment to the project officer, and CDC asserts that users of this equipment may call the hotline. In fact, both MSA's and NRC's proposals provide for such out-of-scope calls.

Hidden Costs

MSA argues that NRC's cost proposal should have been adjusted to account for the fact that it did not have in-place spare parts agreements with manufacturers and, thus, would have to pay higher prices for spare parts than would MSA, which receives discounts under its agreements.

The agency argues that these agreements were expected to be in place within the first 30 days of award, and that the RFP furnished a "plug-in" figure of \$500,000 for spare parts, which should cover NRC's costs while it negotiates these agreements. The agency also asserts that, as MSA's proposal provided no evidence of the quantum of discounts it enjoyed, there was no basis upon which to estimate these additional costs. In any event, the agency calculates that under a worst-case scenario, the maximum additional cost associated with NRC's proposal would be \$70,170, and that such an adjustment would not have affected the selection decision. In view of the circumstances, and considering that CDC's calculation does not factor in the discounts available to NRC as a result of its agreements with major manufacturers, we consider this worst-case-scenario figure to be overstated and have no basis to question the agency's regarding its lack of impact on the final decision.

Contract Start Date

MSA argues that the CDC should have equalized the two proposals in terms of contract start date. MSA asserts that NRC estimated a December 1 start date, but failed to include

¹⁰ MSA's argument that the costs of coordination were not included, citing the language of DEC's subcontract while ignoring relevant proposal language, is not persuasive.

costs for that month, and that it estimated a September 1 start date, and included the costs of September, October, and November.

The RFP's established start date of December 1 was later amended to a start date of 30 days after award of the contract, without no defined date. Both offerors' final cost proposals, submitted on October 27, expressly stated that the proposed costs for the base period began on December 1. Given these express statements, we do not think it unreasonable that the agency considered that both offerors' costs assumed the December 1 start date.

COST/TECHNICAL TRADEOFF ANALYSIS

In its supplemental protest, MSA argued that the CDC conducted an unreasonable cost/technical tradeoff analysis. This protest was based upon information provided the firm in the agency's initial report, which included the proposals, evaluation documents, and the source selection document wherein the cost/technical tradeoff analysis is found. Despite this wealth of information, save for two examples which are of no significance,¹¹ the supplemental protest consisted of nothing more than general and accusatory statements that the contract specialist merely "questioned" the TEP's findings concerning MSA, noted her "suspensions" that MSA was overrated, and "baldly stated" that MSA's advantages did not justify its additional cost. MSA contended that its technical advantages were "swept away" without any attempt to quantify or measure their value.

In response to the general allegations raised in MSA's supplemental protest, CDC correctly stated in its supplemental report that the basis for its cost/technical tradeoff analysis had been discussed at length in the initial report. In addition to providing a substantial legal and factual discussion, the initial report directed the protester to the source selection document itself, in which the contract specialist explains, in great detail, the rationale for her cost/technical tradeoff analysis. In response to the supplemental protest, CDC maintained that the protester had presented no new issues, but had merely attempted to rebut the agency's conclusions.

¹¹First, MSA's criticism of the finding that NRC's proposal to lower DEC's labor hour rate would not create recruitment and retention problems is mooted by the fact that the contract specialist rejected this proposal and adjusted the costs accordingly. Second, MSA's assertion that NRC's allegedly understated indirect structure will have an adverse impact on performance is not supported by the record.

On the same day that the agency's supplemental report was timely filed, 14 working days after the protester received the agency's initial report, MSA timely filed its comments on that initial report. Here, for the first time, it provided numerous pages of specific and detailed objections to the cost/technical tradeoff analysis, as well as an extensive affidavit from its expert.

We think the agency adequately responded to MSA's initial broad ground of protest. Further, we will not review the merits of the specifics noted in MSA's initial comments, filed more than 10 days after it received the initial agency report. MSA was on notice of each and every aspect of its specific objections to the cost/technical tradeoff analysis on the day it timely filed its protest, but inexplicably provided no details at that time. Where, as here, a protester raises a broad ground of protest in its initial submission, but fails to provide any detail on the protest ground until later, so that a further response from the agency would be needed for an objective review of the matter, the protest is filed in a piecemeal fashion and will not be considered. See LaBarge Products, 64 Comp. Gen. 828 (1985), 85-2 CPD ¶ 270; Management Sys. Designers, Inc., B-219601, Nov. 13, 1985, 85-2 CPD ¶ 546.

In any event, MSA has mischaracterized the cost/technical tradeoff analysis. As discussed above, the contract specialist carefully considered the cost issues raised by each proposal and performed the required cost realism analysis. She examined each technical reason for which MSA was recommended and NRC discounted, and provided support for her refutation of each. For example, the first reason given by the TEP in recommending award to MSA was that it, and not NRC, proposed appropriate staff for the CDC-wide requirements in Atlanta. As we explained in our discussion of the cost realism analysis, the contract specialist considered the technical approach of both offerors and concluded that the TEP's view was not supported. Finally, in accordance with the solicitation, the contract specialist considered both cost and technical factors, and determined that NRC presented the most advantageous offer. MSA's allegation that the cost/technical tradeoff analysis consists of mere bald statements and suspicions is simply not true, and we have no basis upon which to find the analysis, or the decision to make award to NRC, unreasonable. See W.M. Schlosser Co., Inc., B-247579.2, July 8, 1992, 92-2 CPD ¶ 8 (agency may award to a lower-cost, lower technically rated offeror if it determines the price premium involved in awarding to a higher technically rated, higher-cost offeror is not justified, given the acceptable level of competence at the lower price).

ORGANIZATIONAL CONFLICT OF INTEREST

MSA alleges that the contracting officer, through the contract specialist, privately determined MSA ineligible as a result of OCI concerns, but justified the award to NRC by conducting unreasonable cost realism and cost/technical tradeoff analyses. MSA also argues that its proposal was misevaluated with respect to the OCI issue, and that the agency failed to conduct meaningful discussions concerning the same issue.

Numerous RFP sample task orders required the awardee to evaluate and/or recommend new hardware and software. Section H.14(c), a provision of the RFP's OCI clause, prohibited the awardee from participating in any capacity in CDC contracts stemming directly from its performance of work under the support services contract. When the RFP was written, the agency recognized these requirements might pose an OCI issue for MSA because it had an existing indefinite quantity contract to sell hardware and software to the agency. In addition, MSA occasionally sold hardware to the agency on an open market basis.

There clearly was an OCI issue here,¹² which was not resolved to the agency's satisfaction during discussions. However, there is no evidence that this was the real reason for the award decision. In support of its allegation to the contrary, MSA offers three grounds, none of which is persuasive: the unreasonableness of the agency's analyses, electronic mail communications, and a draft source selection document.

First, as discussed above, both the cost realism and the cost/technical tradeoff analyses were reasonable. Second, two electronic mail messages among TEP members stating that the panel "had been told" that MSA was ruled ineligible because of an OCI issue are unattributed to anyone, certainly not to the contract specialist, and simply show that the TEP members, who were not responsible for the final award decision, did not know the actual basis for award. In fact, a third message from a TEP member states that, based on his meeting with the contracting office, the proposed award was based primarily on cost, and he concurred with the rationale, which looked solid. Third, a draft source selection document containing the statement, "a waiver of part of the OCI clause was not considered to be in the

¹²An OCI may result when factors create an actual or potential conflict of interest on an instant contract, or when the nature of the work to be performed on the instant contract creates an actual or potential conflict of interest on a future acquisition. FAR § 9.502(c).

agency's best interest, and the [MSA] proposal is unacceptable on this basis," does not show that the award was based on OCI concerns. Draft documents typically contain the writer's preliminary observations. The record in fact shows that the agency did believe MSA's responses to its OCI concerns were unacceptable. Moreover, this very draft document contains the complete and detailed cost/technical tradeoff analysis found in the final document, contradicting MSA's implication that the analyses were "after-the-fact" justifications for the award decision.

Since we see no basis to conclude that the award decision was based on the OCI issue, we need not address the merits of the protester's remaining claims with respect to the agency's evaluation or discussions of the OCI issue with respect to MSA.

Finally, while MSA claims that NRC was improperly evaluated with respect to OCI concerns, a review of the record firmly establishes the contrary. During discussions, NRC was asked to address the potential OCI raised by the RFP's equipment evaluation requirements and the fact that DEC is an equipment vendor. NRC explained that the DEC segment with which it was teamed concentrated on areas not normally including a significant hardware component. However, to assure that no OCI occurred, NRC stated that DEC personnel assigned to the contract would not participate in any other CDC opportunity involving such evaluations, and would not be involved in any CDC opportunity requiring other services that could be viewed as presenting an OCI.¹³ NRC also stated that it, not DEC, would support all evaluations. Based on NRC's approach to the OCI issue, CDC concluded that even if NRC had been substantially involved in marketing DEC products, it would be barred from being tasked to evaluate DEC's products except as expressly directed by the contracting officer. MSA has provided us no basis to find the contracting officer's assessment of the OCI issues raised by NRC's proposal unreasonable.

The protest is denied.

Robert P. Murphy
General Counsel

¹³The very language of this statement belies MSA's claim that NRC did not address the issue of open market procurements.